

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)
)
Distribution of) Docket No. 16-CRB-0010 SD (2014-17)
2014-2017)
Satellite Royalty Funds)

**Multigroup Claimants’ Opposition to Second Supplemental
Memorandum in Support of Motion to Lift Stay**

By its second supplemental memorandum, certain “Allocation Phase Parties” again move for a lift of the stay issued in these proceedings, on substantially the same grounds previously asserted by such parties.¹ Although the supplemental memorandum is couched as an “update” to the Judges, no changed circumstances to “update” the Judges appear therein.

On March 20, 2019, the Judges issued their *Notice of Participants for Preliminary Action to Address Categories of Claims*, wherein the Judges set forth a schedule for “simultaneous briefing by any party in interest regarding proposed

¹ See, e.g., *Joint Notice of Settlement and Motion to Lift Stay* (May 12, 2020), *First Supplemental Motion to Lift Stay* (Oct. 5, 2020).

claimant category definitions”. Id. at Exhibit B. In response, various parties submitted briefs, including Multigroup Claimants.

Following the foregoing submissions, on December 20, 2019, the Judges issued a stay of these proceedings in order to address rulemaking relating to a handful of matters, including the categorization of claims and the treatment of invalid claims. According to the Judges, a Notice of Inquiry for rulemaking would be issued addressing these matters, however until then, the proceedings would be held in suspense.

On May 12, 2020, representatives of Allocation Phase claimant groups informed the Judges that they had “settled these issues” with regard to 2014 and 2015 satellite royalties, and asked the Judges to affirm the allocation phase category definitions previously set forth elsewhere -- disregarding the issues intended to be addressed by the impending Notice of Inquiry. In turn, based on such agreement, those parties moved for a lift of stay with regard to the final distribution of such royalties.

No different than before, the Judges’ order makes clear that the definition of claimant categories is not within the authority of any party (or parties) to exclusively dictate in these proceedings. Rather, the category definitions will be addressed following the aforementioned Notice of Inquiry for rulemaking.

Consequently, on what basis the moving parties assert that it is within their exclusive purview to determine claimant category definitions, remains a mystery.

The moving parties attempt to dismiss Multigroup Claimants' prior objections on two grounds. First, the moving parties note that Multigroup Claimants has no claim to 2014 cable/satellite royalties. This is correct. So, to the extent that the Judges can determine that no other participant will be affected by having category definitions dictated one way or another, there would appear to be no impediment to granting the motion as to 2014 satellite allocations.

Second, the moving parties summarily assert that "[Multigroup Claimants] does not even attempt to explain how it would be harmed if the Judges were to lift the stay . . .". This is incorrect. As the Judges likely recall, the briefing that brought forth the Judges' determination of a need for a Notice of Inquiry engaged in precisely this analysis. Thereat, Multigroup Claimants demonstrated how the characterization of a program in one category versus another had dramatic effect upon the amounts allocable to a particular program, despite having the identical viewership.² Not only do the definitions affect allocation phase participants, but

² See, e.g., *Multigroup Claimants' Comments On Claimant Category Definitions and Proposed Modification* (Apr. 19, 2019), at Section D ("The Definition Attributed to 'Sports Programming' Has a Dramatic Monetary Consequence").

affects parties such as Multigroup Claimants that do not stand as a category representative, or whom have claims in multiple possible categories.³ This is why the Judges did not solicit comments in their March 20, 2019 order only from “allocation phase” participants, but rather solicited briefing from “any party in interest”. Nor did the Judges dismiss Multigroup Claimants’ response to the March 20, 2019 order as having been submitted by an unaffected party, but cited to Multigroup Claimants’ response in their December 20, 2019 order.

To be clear, this is not to say that all determinations relating to the 2014-2017 cable/satellite proceedings need be stayed, as not all are affected by the claimant category definitions. As noted, Multigroup Claimants has no claim to 2014 royalties, so if no other entity with standing to oppose seeks to oppose a distribution relating thereto, and the Judges have no interest in defining the claimant categories before traditional participants impose their own definitions, no reasonable basis would appear to prohibit such distribution. As regards any distribution of 2015-2017 royalties, the contrary is true. Multigroup Claimants’ claims will be necessarily affected by the claimant category definitions, as will be

³ Multigroup Claimants observes that the joint motion was not a submission of all potentially interested parties other than Multigroup Claimants, as it also failed to include stipulation by Global Music Rights, LLC and Major League Soccer, LLC, each of whom submitted petitions to participate in these proceedings.

other participants in such categories, so it remains necessary to prohibit certain parties unilaterally defining the claimant categories until the rulemaking process is completed.

Notwithstanding, Multigroup Claimants is aware of several proceedings and distributions for royalties collected *more than a decade* prior to the 2014-2017 royalties, for which no significant issues remain, and for which such royalties remain undistributed.⁴ The pandemic concerns cited by the moving parties applies equally to the prospective recipients of such royalties, and equity would require that resolution of those royalty distributions occur prior to any distribution of royalties for subsequent proceedings. Until and unless orders are issued for the distribution of royalties from those largely-resolved proceedings, no further distributions should occur.

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4 These include royalties from the following proceedings: Docket no. 2008-2 CD 2000-2003 (Phase II) (Remand), relating to 2000-2003 cable royalties, and Docket nos. 14-CRB-0010-CD/SD (2010-2013) and 14-CRB-0011-SD (2010-2013), relating to 2010-2013 cable/satellite royalties.

To the extent stated, Multigroup Claimants remains opposed to the *Joint Notice of Settlement and Motion to Lift Stay* submitted by various allocation phase participants.

Respectfully submitted,

Dated: April 1, 2021

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on this April 1, 2021, a copy of the foregoing was electronically filed and served via the eCRB system.

_____/s/_____
Brian D. Boydston, Esq.

Proof of Delivery

I hereby certify that on Thursday, April 01, 2021, I provided a true and correct copy of the Multigroup Claimants' Opposition to Second Supplemental Memorandum in Support of Motion to Lift Stay to the following:

Broadcaster Claimants Group, represented by John Stewart, served via ESERVICE at jstewart@crowell.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

Major League Soccer, L.L.C., represented by Edward S. Hammerman, served via ESERVICE at ted@copyrightroyalties.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at scott@oandzlaw.com

Joint Sports Claimants, represented by Michael E Kientzle, served via ESERVICE at michael.kientzle@arnoldporter.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis, served via ESERVICE at smosenkis@ascap.com

Broadcast Music, Inc., represented by Jennifer T. Criss, served via ESERVICE at jennifer.criss@dbr.com

Program Suppliers, represented by Lucy H Plovnick, served via ESERVICE at lh@msk.com

Devotional Claimants, represented by Matthew J MacLean, served via ESERVICE at matthew.maclean@pillsburylaw.com

Signed: /s/ Brian D Boydston